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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC., et al.,

Defendants.

Case No. 5:22-cv-04325-EJD

**STIPULATION AND [PROPOSED]
ORDER TO AMEND COMPLAINT**

1 Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiff Federal Trade Commission
2 (“FTC”), and Defendants Meta Platforms, Inc. and Within Unlimited, Inc. (collectively,
3 “Defendants”) through their undersigned counsel, hereby stipulate as follows:

4 WHEREAS, on July 27, 2022, the FTC filed a Complaint for a Temporary Restraining
5 Order and Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission
6 Act (the “Complaint”) concerning the proposed acquisition of Within Unlimited, Inc. by Meta
7 Platforms, Inc. (the “Proposed Transaction”), and on August 26, 2022, Defendants each
8 answered the Complaint (the “Answers”);

9 WHEREAS, on August 4, 2022, the parties filed a Joint Stipulation and Proposed Order
10 whereby Defendants agreed, *inter alia*, not to close or consummate the Proposed Transaction
11 until after 11:59 PM Eastern Time on December 31, 2022, or until the first (1st) business day
12 after the District Court rules on the FTC’s request for a preliminary injunction pursuant to
13 Section 13(b) of the Federal Trade Commission Act, whichever occurs earlier in time;

14 WHEREAS, on August 5, 2022, the Court granted the parties’ Joint Stipulation and
15 Proposed Order of August 4, 2022;

16 WHEREAS, on August 11, 2022, the FTC issued an administrative complaint regarding
17 the Proposed Transaction;

18 WHEREAS, on August 23, 2022, the parties filed a Joint Stipulation of Dismissal of
19 Mark Zuckerberg, whereby, *inter alia*, the FTC agreed voluntarily to dismiss the claims it had
20 asserted against Mark Zuckerberg in the above-captioned case pursuant to Rule 41(a)(1)(A)(ii) of
21 the Federal Rules of Civil Procedure, without prejudice;

22 WHEREAS, Plaintiff desires to amend the Complaint to (1) remove allegations
23 concerning the VR Fitness App market, including any anticompetitive effects in that market
24 should the Proposed Transaction occur; (2) remove Mark Zuckerberg as a named defendant,
25 pursuant to the parties’ Joint Stipulation of August 23, 2022; and (3) conform the Complaint to
26 the present procedural posture—specifically, that the FTC no longer seeks an emergency
27 temporary restraining order and has filed a complaint in the administrative court;

1 WHEREAS, the stipulated amendment will not alter the date of any event or any deadline
2 already fixed by Court order;

3 IT IS HEREBY STIPULATED AND AGREED by the parties, through their counsel, that
4 pursuant to Federal Rule of Civil Procedure 15(a)(2), the FTC may file an Amended Complaint,
5 a copy of which is attached hereto;

6 IT IS FURTHER STIPULATED that Defendants waive notice and service of the
7 Amended Complaint. Defendants reserve their right to file a responsive pleading, including a
8 motion to dismiss the Amended Complaint, but they shall not be required to answer the
9 Amended Complaint and all denials, responses and affirmative defenses contained in
10 Defendants' Answers to the Complaint shall be deemed responsive to the Amended Complaint.
11

12 Dated: October 7, 2022

13 By: /s/ Abby L. Dennis

14 Abby L. Dennis
15 Peggy Bayer Femenella
16 Joshua Goodman
17 Jeanine Balbach
18 Michael Barnett
19 E. Eric Elmore
20 Justin Epner
21 Sean D. Hughto
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Counsel for Defendant Within Unlimited, Inc.

22 **PURSUANT TO STIPULATION, IT IS SO ORDERED, this _____ day of**

23 _____, 20____.

25 _____
26 Honorable Edward J. Davila
27 United States District Judge
28 Northern District of California

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FILER'S ATTESTATION

I, Abby L. Dennis, am the ECF User whose ID and password are being used to file this JOINT STIPULATION AND [PROPOSED] ORDER TO AMEND COMPLAINT. In compliance with Civil Local Rule 5-1(h), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

By: /s/ Abby L. Dennis

Abby L. Dennis